IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11695 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ALPESH @ ALTAF DHIRUBHAI KAKADIYA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 11695 of 2002

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

MR VM PANCHOLI, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 28/01/2003

ORAL JUDGEMENT

#. By way of this petition, the detenu has challenged his detention order dated 29.4.2002. By the impugned

order, the detenu is detained under Section 3(1) of the Prevention of Antisocial Activities Act,1985 (hereinafter referred to as "the PASA" for short). It is alleged that the petitioner is a "dangerous person" and in order to prevent him from continuing his illegal activities, he has been detained by the aforestated detention order.

#. Along with the detention order, the detenu was also served with the grounds of detention. In the said grounds, there is reference of various cases against the petitioner-detenu and the same are in connection with the theft cases. It is alleged against the petitioner that the petitioner has committed the theft and various cases are lodged against the petitioner and the same are pending. Reference of such cases are finding place in paras 1 to 4 of the detention order. It is also mentioned that the petitioner is in judicial custody, however, he is likely to be released on bail, and, thereafter, he may continue such illegal activities.

#. At the time of hearing of this petition, it is argued by Mr.Prajapati that, along with the petitioner, the other detenu named Ashkpuri Savaipuri Goswami was detained for similar type of cases. According to Mr.Prajapati, the grounds of detention in both the cases are similar. In short, the said detenu is co-accused along with the petitioner. So far as the aforestated detenu is concerned, he had also challenged his detention order by way of preferring Special Civil Application No.5954 of 2002. This Court (Coram: R.P.Dholakia,J), while allowing the said petition, has observed in paras 2 to 4 as under.:

"2. It is a settled principle of law that in order to bring a person within the expression "dangerous person" as defined in clause (c) of section 2 of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short "the Act of 1985"), there should be positive materials to indicate that such person is habitual of committing or attempting to commit or abetting the commission of offences which are punishable under Chapter XVI or XII of Chapter V of the Arms Act and that single or isolated act falling under the said Chapters cannot be characterised as a habitual acts as envisaged in section 2(c) of the PASA Act. Further, besides a person being a dangerous person, his activities should also fall within the ambit of expression "public order". A distinction has to be drawn between the "law and

order" and "maintenance of public order". A reference may be made of M.J.Shaikh V. M.M.Mehta, Commissioner of Police & Ors., reported in 1995 (2) GLR 1268.

3. I have heard learned advocate for the petitioner and learned AGP and also perused the material on record. According to learned advocate for the petitioner, the detaining authority has passed the detention order relying upon the four offences punishable under Indian Penal Code. The learned advocate for the petitioner has further submitted that on the date of passing detention order, the detenu was in judicial custody, and this aspect would have been considered by the detaining authority while passing the detention order. In this connection, he has drawn my attention towards the case of Amritlal and others Vs. Union Govt. Through Secy., Ministry of Finance and Others, 2001 SCC (Cri) 147 wherein it was held at Head note as under:

"Preventive Detention - Detention order--Subjective satisfaction - Detenu already in jail-- Detaining authority must be satisfied on the basis of available cogent material about likelihood of the detenu being released on bail and not merely about likelihood of his moving application for bail - In absence of such satisfaction detention order cannot be sustained - Prevention of Illicit Traffic in Narcotic drugs and Psychotropic Substances Act, 1988, S.3(1)"

4. It appears that on the date of passing the detention order, the detenu was in judicial custody, hence in view of the above judgment rendered in the case of Amritlal (Supra), the detention order is illegal and cannot be sustained and the same is required to be quashed and set aside."

#. It is not in dispute that the facts of the present detenu are identical with the facts of the aforesaid co-detenu. Under these circumstances, this petition is required to be allowed in view of the order dated 29.8.2002 of this Court in the aforestated special civil application. Since the co-detenu has been released by this Court, the present petitioner-detenu is also required to be treated in the same manner, as, there is

absolutely no difference in the factual aspect of both these cases. It is also not in dispute that the petitioner is in judicial custody at the relevant time when the detention order was passed. Mr.Prajapati pointed out that the petitioner has not even applied for bail by way of preferring appropriate bail application at the relevant time, though, he is not aware about the factual position as of today. Mr.Pancholi, learned AGP, on instruction, has pointed out that, the grounds in both the cases are identical and similar.

#. In view of the aforesaid position, this petition is allowed. The order of detention dated 29.4.2002 is quashed and set aside. The detenu Alpesh @ Altaf Dhirubhai Kakadiya is ordered to be set at liberty forthwith if he is not required in any other case. Rule is made absolute accordingly. Direct service is permitted.

(P.B.Majmudar,J)
(pathan)